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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2008-225

12 **DIEGO ROSE**  
215 W. 26th Street  
13 San Bernardino, CA 92405

**A C C U S A T I O N**

14 Registered Nurse License No. 667675  
15 Public Health Nurse Certificate No. 69551

Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Accusation solely  
20 in her official capacity as the Executive Officer of the Board of Registered Nursing (Board).

21 2. On or about October 17, 2005, the issued Registered Nurse License No.  
22 667675 to Diego Rose (Respondent). The Registered Nurse License was in full force and effect  
23 at all times relevant to the charges brought herein and will expire on July 31, 2009, unless  
24 renewed.

25 3. On or about November 4, 2005, the issued Public Health Nurse  
26 Certificate No. 69551 to Diego Rose (Respondent). The Public Health Nurse Certificate was in  
27 full force and effect at all times relevant to the charges brought herein and will expire on July 31,  
28 2009, unless renewed.

## JURISDICTION

4. This Accusation is brought before the Board, under the authority of the following laws. All Section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

7. Section 490 states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

8. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or

1 abetting the violating of, or conspiring to violate any provision or term of this chapter [the  
2 Nursing Practice Act] or regulations adopted pursuant to it.

3 . . . .

4 "(f) Conviction of a felony or of any offense substantially related to the  
5 qualifications, functions, and duties of a registered nurse, in which event the record of the  
6 conviction shall be conclusive evidence thereof. . . ."

7 9. Section 2762 states, in pertinent part:

8 "In addition to other acts constituting unprofessional conduct within the meaning  
9 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed  
10 under this chapter to do any of the following:

11 . . . .

12 "(b) Use any controlled substance as defined in Division 10 (commencing with  
13 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as  
14 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or  
15 injurious to himself or herself, any other person, or the public or to the extent that such use  
16 impairs his or her ability to conduct with safety to the public the practice authorized by his or her  
17 license.

18 "(c) Be convicted of a criminal offense involving the prescription, consumption,  
19 or self-administration of any of the substances described in subdivisions (a) and (b) of this  
20 section, or the possession of, or falsification of a record pertaining to, the substances described in  
21 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
22 thereof.

23 "(d) Be committed or confined by a court of competent jurisdiction for  
24 intemperate use of or addiction to the use of any of the substances described in subdivisions (a)  
25 and (b) of this section, in which event the court order of commitment or confinement is prima  
26 facie evidence of such commitment or confinement. . . ."

27 10. California Code of Regulations, title 16, section 1444 states, in pertinent  
28 part:

1           “A conviction or act shall be considered to be substantially related to the  
2 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the  
3 present or potential unfitness of a registered nurse to practice in a manner consistent with the  
4 public health, safety, or welfare. . . .”

5           11.     Section 125.3 provides, in pertinent part, that the Board may request the  
6 administrative law judge to direct a licensee found to have committed a violation or violations  
7 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case.

9                               **FIRST CAUSE FOR DISCIPLINE**

10                           **(Conviction of Substantially Related Crime)**

11           12.     Respondent is subject to disciplinary action under section Sections 490  
12 and 2761, subdivision (f), as defined in California Code of Regulations, title 16, section 1444, in  
13 that on or about May 1, 2006, Respondent was convicted of a crime substantially related to the  
14 qualifications, functions or duties of a registered nurse which to a substantial degree evidence his  
15 present or potential unfitness to practice as a licensed registered nurse in a manner consistent  
16 with the public health, safety, or welfare. The conviction is as follows:

17           a.       On or about May 1, 2006, in a criminal proceeding entitled *The People of*  
18 *the State of California v. Diego Rose* in San Bernardino County Superior Court, Rancho  
19 Cucamonga Courthouse, Case No. TWV049818, Respondent was convicted by his plea of *guilty*  
20 for violating Vehicle Code section 23152(b) (driving under the influence with a 0.08% or higher  
21 blood alcohol), a misdemeanor. The Court ordered Respondent to attend a State approved  
22 multiple offender alcohol program, 45 days jail time to be served at the Glen Helen  
23 Rehabilitation Center, and pay fines and penalties.

24           b.       The circumstances of the conviction are that on or about November 12,  
25 2005, at approximately 1:00 a.m., San Bernardino Sheriff's Department deputies, on DUI  
26 enforcement, performed a traffic stop on Respondent after observing him driving his vehicle  
27 without headlights through a mall parking lot at a high rate of speed. Respondent was arrested  
28 after he failed field sobriety tests with a preliminary blood alcohol content (BAC) level of 0.13%.

1 Subsequently, Respondent's BAC level tested 0.11%.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Conviction of Crime Involving Alcohol)**

4 13. Respondent is subject to disciplinary action under Section 2761,  
5 subdivision (a), in conjunction with Section 2762, subdivision (c), on the grounds of  
6 unprofessional conduct, in that on or about May 1, 2006, Respondent was convicted of a crime  
7 involving the consumption and self-administration of alcoholic beverages, as more fully set forth  
8 above in paragraphs 12(a) and (b).

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Dangerous Use of Alcohol)**

11 14. Respondent is subject to disciplinary action under Section 2761,  
12 subdivision (a), in conjunction with Section 2762, subdivision (b), on the grounds of  
13 unprofessional conduct, in that on or about November 12, 2005, Respondent used alcoholic  
14 beverages to an extent or in a manner dangerous or injurious to himself, any other person, or the  
15 public, as more fully described above in paragraphs 12 and 13.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Commitment for Intemperate Use of Alcohol)**

18 15. Respondent is subject to disciplinary action under Section 2761,  
19 subdivision (a), in conjunction with Section 2762, subdivision (d), on the grounds of  
20 unprofessional conduct, in that on or about May 1, 2006, Respondent was committed to attend a  
21 State approved multiple offender alcohol program, and 45 days jail time to be served at the Glen  
22 Helen Rehabilitation Center, as more fully set forth above in paragraph 12 (a).

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct)**

25 16. Respondent is subject to disciplinary action under Section 2761,  
26 subdivisions (a) and (d), in that on or about November 12, 2005, and on or about May 1, 2006,  
27 Respondent committed acts of unprofessional conduct and violations of the Nursing Practice Act,  
28 as more fully described above in paragraphs 12 - 15.

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1           4.       Taking such other and further action as deemed necessary and proper.

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3   DATED: 1/23/08

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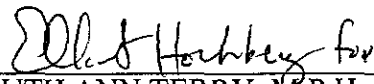
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RUTH ANN TERRY, M.P.H, R.N  
Executive Officer  
Board of Registered Nursing  
State of California  
  
Complainant

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